

APR 12 9 56 AM 1999 Federal Communications Commission

DA 99-677

DISPATCHED BY
 Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Clio and Tuscola, Michigan))

MM Docket No. 99-115

RM-9378

NOTICE OF PROPOSED RULE MAKING

Adopted: March 31, 1999

Released: April 9, 1999

Comment Date: June 1, 1999

Reply Date: June 16, 1999

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed on behalf of Faircom Flint Inc. ("Faircom"), proposing the reallocation of Channel 268A from Tuscola, Michigan, to Clio, Michigan. Faircom also requests modification of its license for Station WWBN, Tuscola, to be modified to specify operation at Clio. Faircom indicated that it would file an application for Channel 268A at Clio, if the channel is allotted to the community.

2. Faircom filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O") 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, Faircom states that Channel 268A may be allotted to Clio consistent with the Commission's separation requirements at a site 9.6 kilometers northwest of the community. Further, allotting Channel 268A to Clio would permit Clio to receive its first local aural service, triggering allotment priority number three of the Commission's allocation priorities. Faircom acknowledges that while its proposal would provide a first local aural transmission service to Clio, it also would remove Tuscola's sole local service, since WWBN is the only station licensed to Tuscola. In further support of its request, Faircom points out that Clio is an incorporated community, with a population of 2,629 people, while Tuscola is not incorporated or listed in the 1990 U.S. Census and has an estimated population of 100 people. Faircom points out that Clio has a Mayor and city council form of government, its own volunteer fire department and police department. According to Faircom, Clio offers its residents a diverse selection of municipal services, businesses and cultural

resources associated with a community of this size. Although Faircom believes the reallocation should be allowed because a first local service will be provided to the larger community, Faircom points out that WWBN will provide service to an additional 186,714 people which represents a 110 percent increase in population coverage. Faircom further states that the reallocation will not remove service from a rural area to serve an urban area and although the reallocation will remove Tuscola's sole local service, Tuscola will continue to receive existing city-grade service from Station WWBN as the 70 dBu signal from Channel 268A will reach the entire Tuscola area.

3. We believe Faircom's proposal warrants consideration since the reallocation of Channel 268A from Tuscola, Michigan, to Clio, Michigan, could provide the community of Clio with its first local aural transmission service under our allotment priorities.¹ In seeking comment on Faircom's proposal, we recognize that the proposed reallocation of Station WWBN from Tuscola to Clio would result in the smaller community of Tuscola losing its sole local service. However, as pointed out by Faircom, the Commission stated in Change of Community MO&O that we would consider such a request "in the rare circumstances where removal of a local service might serve the public interest." Id., 5 FCC Rcd 7096. In comparing mutually exclusive allotment proposals that would provide a first local service to either community, the more populated community is generally favored. Here, Faircom has stated that the public interest would be served by the reallocation because it would provide the larger community of Clio with its first local service. In addition, a Commission engineering analysis indicates that while the loss area for Station WWBN, Tuscola, contains 2,800 people, the station at Clio will provide a new service to 8,000 people. Our analysis also indicates that the loss area is served by five or more existing aural facilities and is considered to be well served and that the reallocation does not involve any gray or white areas. Therefore, Faircom is requested to provide any additional information as to the overall public interest benefits that would result from the reallocation of Channel 268A from Tuscola to Clio. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 268A at Clio.

4. Channel 268A can be allotted to Clio, Michigan, in compliance with the Commission's minimum distance separation requirements.² Since Clio is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for the allotment of Channel 268A at Clio.

5. In view of the fact that the proposed allotment could provide a first local service to Clio, Michigan, the Commission believes it would serve the public interest to solicit comments on the

¹ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3)]. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

² The coordinates for Channel 268A at Clio are 43-15-47 and 83-45-40.

proposal to allot Channel 268A to Clio. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Clio and Tuscola, as follows:

Community	Channel No.	
	Present	Proposed
Clio, Michigan	-----	268A
Tuscola, Michigan	268A	-----

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **June 1, 1999**, and reply comments on or before **June 16, 1999**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Lee W. Shubert
Haley Bader & Potts, P.L.C.
4350 North Fairfax Drive, Suite 900
Arlington, Virginia 22203-1633

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's

Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, Washington, D. C.